COVINGTON

This Is How You Manage Insurance Recovery After Fires

December 12, 2017

Insurance Recovery

Massive wildfires have devastated Ventura County, and they now threaten lives, homes and businesses in Los Angeles and San Diego. In the face of these catastrophic fires, businesses and their employees should focus on safety. In their aftermath, businesses must act promptly and assertively to protect their insurance rights and remedies. Early and deliberate action can maximize insurance recovery and minimize miscommunications and problems with insurers.

Insurance is a valuable asset, and it should be handled with the same level of care you would use for similarly valuable assets. Insurers have teams working on any claim—claims handlers, adjusters, counsel, accountants and consultants. Facing thousands of new, additional claims after a difficult year, insurers will work to minimize claim payouts. Here are some practical steps to make sure that your insurers pay what their policies promised.

1. Protect the Property.

- Take steps necessary to ensure the lives and safety of those present at the property.
- Mitigate damage from oncoming fires and undertake post-disaster emergency and temporary repairs to stabilize and protect the property.
- Document mitigation and stabilization steps.

2. Put Together A Team.

- Set up a team to handle the claim; include management, finance, risk management, legal and operations. Ensure regular team communication and coordination.
- Large claims are complicated. Determine the areas in which you need assistance.
  - For large claims, the insurers will hire an adjuster and consultants to evaluate proposed repairs. Consider hiring experienced construction consultants who understand issues like “cause and origin” and “pre-existing conditions.”
  - For claims that involve business interruption losses, the insurers will retain forensic accountants. Have a good accountant who can push back if the insurers seek to introduce assumptions or accounting methods that unfairly devalue your claim.
  - The insurers will likely involve inside or outside counsel with significant insurance law expertise, often behind the scenes. Consider leveling the legal playing field.

- Read your policies and understand how they work. Early descriptions of the loss, its causes, and your expenditures can significantly affect whether your insurer accepts coverage or invokes exclusions or sublimits.

3. Give notice.

- Provide notice as soon as possible to all of your insurers that might be responsible for the types of loss you have incurred.
- If you are an additional insured under someone else's policies, make sure they give notice.

4. Understand your coverage.

- Insurance policies are often complicated documents. An "endorsement" on page 72, for example, may completely change or delete critical contract language on page 1.
- Some losses beyond physical property damage that your policies may cover:
  - *Business interruption or business income* coverage typically protects against loss of earnings from a slowdown or suspension of your operations due to property damage;
  - *Extra expense* coverage typically covers the increased costs to continue your normal operations after property damage (*e.g.,* leasing new space and worker overtime);
  - *Contingent business interruption* language covers losses you incur because your customers or suppliers cannot operate as usual;
  - *Ingress/Egress* coverage typically protects against losses from your inability to access insured (but undamaged) property;
  - *Law or Ordinance* provisions typically cover the increased costs to repair or replace property when new, higher standards apply; and
  - *Professional Fees* provisions typically cover costs related to preparing and submitting an insurance claim.
- Understand the legal landscape as courts can read exclusions out of insurance policies or require strict compliance with policy conditions. *E.g., Howell v. State Farm Fire & Cas. Co*., 218 Cal. App. 3d 1446, 1452 (1990) (exclusion in fire policy unenforceable where fire causes the damage at issue).
- If you face potential liability related to the fires:
  - notify your liability insurers immediately, including those of contractors and other business partners under which you might be an additional insured;
  - do not admit liability or make offers of settlement without getting your insurers' consent; and
  - protect your rights to control your own defense and have your insurers fund it.

5. Track deadlines.

- Know what deadlines the proof-of-loss and suit-limitation terms in your policies impose.
- Track these deadlines throughout the recovery process.
- Ensure that your organization complies with deadlines. Ask for extensions if necessary; keep careful records of any extensions and new deadlines.

6. Record as you go.

- Keep complete, detailed records related to damages, expenses, and steps taken to mitigate or minimize loss.
- Record all of your communications with insurers, their adjusters and their consultants.

7. Communicate promptly but cautiously.

- Communicate with insurers, adjusters, and brokers from the start.
- Exercise caution. Insurers may seek to frame the issues using coverage-minimizing language or assumptions. Policyholders can easily but unwittingly acquiesce in those assumptions reducing their recovery. Insurers may, for example:
  - incorrectly assert that pre-existing damage or wear to property justifies a refusal to pay the full replacement cost;
  - inappropriately refuse to pay for upgrades necessary to repair or rebuild in compliance with code; or
  - use economic forecasts that understate your actual business interruption losses.
- Understand your policy's sub limits and exclusions before agreeing with your insurer on causation or the characterization of particular categories of loss.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Insurance Recovery practice:

Benedict Lenhart (Co-Chair)	+1 202 662 5114	blenhart@cov.com
Mitchell Dolin (Co-Chair)	+1 202 662 5210	mdolin@cov.com
Anna Engh	+1 202 662 5221	aengh@cov.com
Gretchen Hoff Varner	+1 415 591 7056	ghoffvarner@cov.com
Rukesh Korde	+1 202 662 5619	rkorde@cov.com
René Siemens	+1 424 332 4751	rsiemens@cov.com